

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:)	Group Art Unit: 3751
Ball)	Confirmation No.: 2017
Serial No.: 10/732,726)	Examiner: Robert M. Fetsuga
Filed: December 10, 2003)	
Atty. File No.: 5564-152)	<u>INTERVIEW SUMMARY</u>
Entitled: "Method and Apparatus for Assembling)	
and Sealing Bathtub Overflow and)	<i>Electronically Submitted</i>
Waste Water Ports")	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

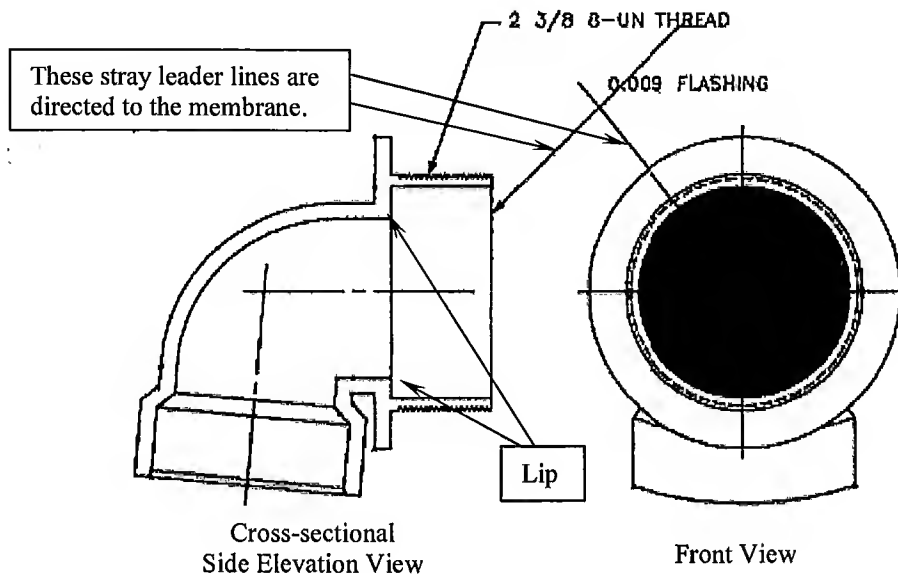
In furtherance of an Examiner Interview conducted on March 3, 2010, the undersigned submits this Interview Summary pursuant to 37 CFR 1.133 and MPEP 713.04. A Notice of Appeal associated with the instant application was filed on January 4, 2010. The maximum extended period to file an Appeal Brief is August 4, 2010. For the reasons set forth below, however, an appeal is believed unnecessary. Consideration of this submission presents an opportunity to conserve the resources of the Applicant and the Office. The undersigned thanks the Examiner for his time and his indication that he would review the case law and related arguments provided below.

During the interview, Applicant's counsel expressed appreciation for the Examiner's Advisory Action that confirmed that all objections to the figures, claims and specification and Section 112 rejections outlined in the Final Office Action dated September 4, 2009 were overcome by the Amendment After Final filed December 14, 2009. Only Section 103 rejections that require teachings of Fritz remain. Because evidence of record establishes that Applicant has properly sworn behind Fritz, it cannot be considered prior art and the claims are in a condition for allowance.

In the Final Office Action the Examiner confirmed that Exhibit B of Inventor Ball's Declaration under Rule 131 (also denoted as Fig. 4), dated February 9, 2000, disclosed a

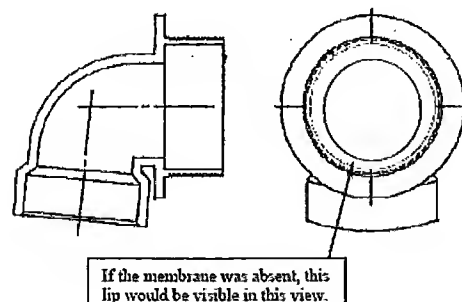
membrane for preventing fluid flow. The Examiner also noted that the date associated with Exhibit B was subsequent to the December 1, 1999 filing date of Fritz. The Examiner failed to appreciate, however, that the submitted engineering drawing Exhibit A of that Declaration, dated December 7, 1999, also showed the same membrane.

More specifically, provided below is an annotated excerpt of Exhibit A showing the membrane¹.



In the present case, the independent draftsman's declaration is sufficient corroborating evidence to establish conception earlier than Fritz. Mr. Carlson declares that it usually takes him 3-4 weeks to produce such drawings from an initial disclosure, and

¹ Pursuant to normal engineering drawing practices, the front view would show the lip if a membrane was absent. See the illustration below.



therefore concludes that conception must have occurred in November of 1999 – BEFORE THE FILING DATE OF FRITZ – December 1, 1999.²

A corroborated statement of an inventor is sufficient to establish a date of conception. Reese v. Hurst, 661 F.2d 1222, 1225 (CCPA 1981)(“Independent corroboration may consist of testimony of a witness, other than the inventor, to the actual reduction to practice or it may consist of evidence of surrounding facts and circumstances independent of information received from the inventor.”)(emphasis added). This governing law has been relied upon by the Federal Circuit in situations arising from civil litigation, as well as from appeals from the Board of Patent Appeals. See, e.g. In re Gardner, 508 F.3d 1376 (Fed. Cir. 2007).

Sufficiency of corroboration is determined by using a “rule of reason” analysis, under which all pertinent evidence is examined when determining the credibility of an inventor’s testimony. Price v. Symsek, 988 F.2d 1187, 1195 (Fed. Cir. 1993). Here, a rule of reason analysis would include the other pertinent evidence establishing the credibility of the inventor’s testimony, including that the invention was conceived around his birthday of 10/10/99 birthday; his move from Kansas City and his transition to a Vice President position.³ Together with Mr. Carlson’s declaration, such evidence reasonably establishes that Fritz cannot properly be relied upon to support an obviousness rejection under section 103. See, Cooper v. Goldfarb, 154 F.3d 1321, 1327 (Fed. Cir. 1998) (“It is not necessary

² The following is an excerpt from Mr. Carlson’s declaration:

6. Upon information and belief, the first concept drawings were completed by me on December 7, 1999. Exhibit A is a copy of engineering drawings I provided to Mr. Ball where my initials “BC” may be found near the date shown on the drawing.

7. Upon information and belief, it usually takes me about three to four weeks to perform modeling and drafting activities associated with a conceptual design. Therefore, Mr. Ball must have disclosed the invention to me at least in November of 1999.

³ The following is an excerpt from Mr. Ball’s declaration:

5. Upon information and belief, the claimed invention was conceived prior to December 1, 1999. I hereby declare that I conceived the invention in October of 1999. I recall the conception of the invention as it was two weeks subsequent to my birthday of October 10 and generally around the time of my move from Kansas City, MO and my transition from Watco to Woodford as Vice President of Engineering.

6. Upon information and belief, after I discussed the concept, then referred to the Schedule 40 Overflow Elbow and later referred to the Innovator, with Mr. Bill Carlson, a designer/drafter employed by Woodford, in at least November of 1999.

to produce an actual over-the-shoulder observer. Rather, sufficient circumstantial evidence of an independent nature can satisfy the corroboration requirement.”).

It is respectfully requested, in view of the cited legal precedent and the undisputed evidence of record, that the Examiner withdraw the 103 rejections and pass all claims to allowance. As this case has been pending since 2003, Applicant believes that all applicable prior art has by now been located, considered and cited.

In the event a further telephone conversation would advance prosecution, the Examiner is invited to contact the undersigned. No fees are believed due for this submission. The Examiner, however, is authorized to charge any fees deemed necessary to Deposit Account 19-1970.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: /Joseph E. Kovarik/
Joseph E. Kovarik
Registration No. 33005
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700

Date: March 4, 2010